

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KIMBERLY C. CUTONE and
ANTHONY CUTONE,

Plaintiffs,

v.

ELI LILLY AND COMPANY,

Defendant.

CIVIL ACTION No. 04-CV-12725 (JLT)

**CONSENT MOTION TO WAIVE DEFENDANT ELI LILLY AND COMPANY'S
PERSONAL APPEARANCE AND ALLOW SAID DEFENDANT
TO BE AVAILABLE AT MEDIATION BY TELEPHONE**

Defendant Eli Lilly and Company ("Lilly"), through its counsel, hereby requests this Court to waive Lilly's personal appearance at mediation and allow Lilly to be available by telephone at the mediation conference scheduled for October 18, 2006. In support of this motion, Lilly states as follows:

1. A mediation conference is currently scheduled in this matter for October 18, 2006. Lilly is an Indiana corporation headquartered in Indianapolis, Indiana, and would incur difficulty and expense in traveling to this forum for the mediation conference. Lilly requests that it be allowed to be available by telephone for the duration of the conference. Counsel for Lilly will have full authority to engage in settlement negotiations and could discuss all offers by telephone with Lilly.
2. Counsel for Plaintiff consents to the granting of this motion.

WHEREFORE, for the foregoing reasons Defendant Eli Lilly and Company respectfully requests that its Consent Motion to Waive Personal Appearance at Mediation be granted.

Respectfully submitted,

ELI LILLY AND COMPANY
by its attorneys

/s/ Brian L. Henninger
James J. Dillon (BBO# 124660)
Brian L. Henninger (BBO# 657926)
Foley Hoag LLP
155 Seaport Boulevard
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(617) 832-1000

Dated: September 7, 2006

LR 7.1(A)(2) CONFERRAL CERTIFICATION

I certify that counsel for Lilly contacted Plaintiff's counsel on September 7, 2006 to attempt in good faith to resolve the issues addressed in this Motion. Plaintiff's counsel consented to this Motion.

/s/ Brian L. Henninger

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[PROPOSED] ORDER

UPON CONSIDERATION of the Consent Motion to Waive Defendant Eli Lilly and Company's Personal Appearance and Allow Said Defendant to be Available at Mediation by Telephone and for good cause shown, it is this _____ day of _____

ORDERED that the Motion be and hereby is GRANTED;

AND IT IS FURTHER ORDERED that Defendant Eli Lilly and Company's Personal Appearance is waived and Eli Lilly and Company is allowed to be available at the Mediation Conference by telephone.

DATE

Magistrate Judge Marianne B. Bowler